



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1998

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR98-0854

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114465.

The Comptroller of Public Accounts (the "comptroller") received an open records request for the following categories of documents:

1. All internal memos, policy statements, letters, training materials and any other written documents or correspondence prepared since January 1, 1988 regarding the **irrevocable election** rule.
2. A copy of all refund claims and supporting documents (with names and amounts deleted) filed after 1/1/88 based on the **irrevocable election**.
3. Copy of all agreements, settlements, letters, correspondence or written documents of any nature written after January 1, 1988 regarding settlements reached by the Comptroller with taxpayers after dispute related to the **irrevocable election** issue. [Emphasis in original.]

You contend that portions of the requested documents are excepted from required public disclosure pursuant to sections 552.101, 552.107(1), and 552.111 of the Government Code.

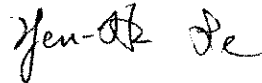
You have submitted to this office as Enclosure 3, documents that constitute a representative sample of documents requested in item 2 listed above, and contend that certain portions of these documents are excepted from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2).

Although this office has determined that "position letters" and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted, all supporting documents that are submitted to the comptroller by the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code. *See* Open Records Letter No. 97-0295 (1997). All of the documents contained in Enclosure 3 appear to have been submitted to the comptroller by a taxpayer. We therefore conclude that all documents held by the comptroller coming within the ambit of item 2 listed above must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. Similarly, the other information in Enclosure 2 that you have marked as being protected under section 552.101 must also be withheld pursuant to section 111.006(a)(2). Additionally, we have marked other information that must be withheld under section 111.006(a)(2).

You have marked portions of the documents contained in Enclosure 2 as coming within the protection of sections 552.107(1) and 552.111 of the Government Code. Section 552.107(1) protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *See* Open Records Decision No. 574 (1990). Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process, Open Records Decision No. 615 (1993) at 5, including drafts of documents intended for future release. Open Records Decision No. 559 (1990). We generally agree that the information you have marked in the documents contained in Enclosure 2 come within the protection of sections 552.107(1) and 552.111. We have marked a small portion of the information you seek to withhold pursuant to section 552.111 that is factual in nature; this information, as well as the remaining unmarked information contained in these documents, must be released to the requestor, except as discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/rho

Ref.: ID# 114465

Enclosures: Marked documents

cc: Mr. Randy Casey, CPA
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(w/o enclosures)